

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-24 are pending in the application, with claims 1, 7, 8, 9, 10, 11, 12, 13 and 19 being the independent claims. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Telephone Interview with the Examiner

Applicants thank the Examiner for the telephone interview on March 19, 2009. The Examiner stated that claims 6-13, 19-21 and the remaining subject matter of claims 1-5 and 14 have been provisionally withdrawn from consideration, pending a request for an expansion of the search. As detailed below, Applicants respectfully submit that all objections and rejections raised by the Examiner should be withdrawn. Thus, Applicants respectfully request that the Examiner expand the search and remove the provisional withdrawal of claims 6-13, 19-21 and the remaining subject matter of claims 1-5 and 14.

Objection to the Claims

Applicants thank the Examiner for the comments on the proper use of semicolons in the claims. Office Action, page 6, ll. 12-14. Applicants note that they have made the necessary amendments to correct the errors in the claims.

Rejections under 35 U.S.C. § 103

The rejection of claims 1-5, and 14 under 35 U.S.C. § 103(a) as allegedly being unpatentable over PCT publication WO 01/17973 by Maetzke ("Maetzke") is respectfully traversed. The Examiner has alleged Maetzke teaches an herbicide that is structurally similar to the claimed compounds, that differs only in the placement of a substituent on a phenyl ring. Office Action, page 5, ll. 5-8. The Examiner further alleged that compounds which differ only in the placement of substituents in a ring system are not unobvious absent unexpected results. Office Action, page 5, ll. 15-16.

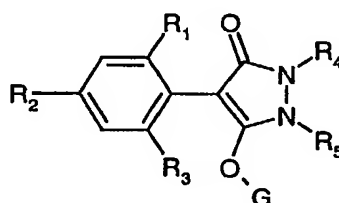
The United States Supreme Court, in *KSR International v. Teleflex, Inc.*, 550 U.S. 398 (2007), further clarified the requirements for obviousness analysis under 35 U.S.C. § 103(a). The Court noted that the analysis supporting a rejection under 35 U.S.C. § 103(a) should be made ***explicit***, and that it was "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. The Court specifically stated:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was ***an apparent reason*** to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, ***this analysis should be made explicit***. (*KSR*, slip opinion, page 14, *citing In Re Kahn*, 441 F. 3d 977,988 (CA, Fed. 2006) ([R]ejections on obviousness grounds ***cannot be sustained by mere conclusory*** statements, instead, there must be some articulated reasoning with some rational underpinning to support a legal conclusion of obviousness").

"There is no suggestion to combine . . . if a reference teaches away from its combination with another source." *Tec Air, Inc. v. Denso Manufacturing Michigan Inc.*, 192 F.3d 1353, 1360 (Fed. Cir. 1999).

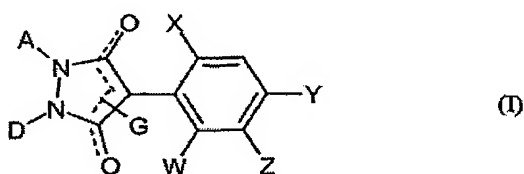
i. Maetzke does not disclose the claimed compounds of the present invention and does not provide a reason for modifying its compounds

Maetzke discloses a very broad genus of compounds of the following formula:



See Maetzke, page 2. Maetzke's general formula encompasses hundreds of thousands (if not millions) of compounds. However, neither the compounds of this general formula nor the compounds described in the examples of Maetzke teach compounds of the present invention.

Claim 1 of the present invention recites compounds of formula (I):



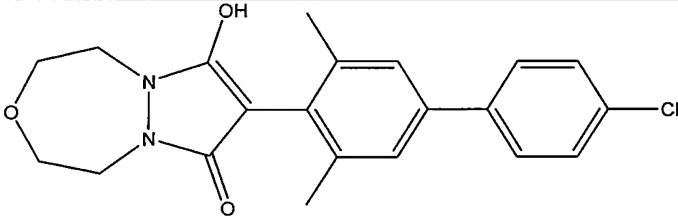
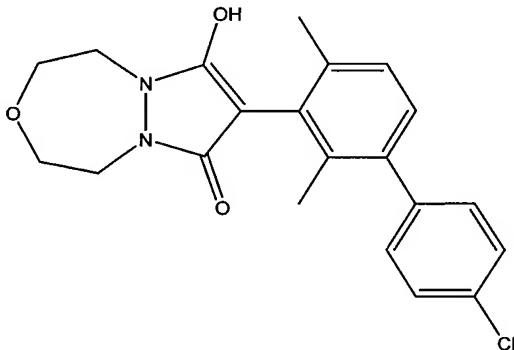
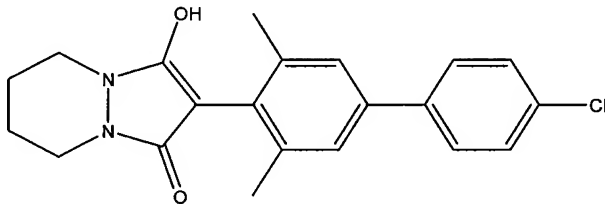
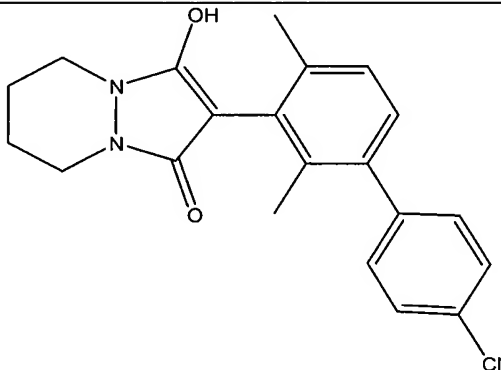
Application as Filed, page 151, ll. 1-2. Compounds of formula (I) feature a substituent at the meta-position of the phenyl ring ("Z"). Maetzke does not teach any compounds of formula (I) which contain a substituent at the meta-position of the phenyl ring. Thus, Maetzke does not teach all of the elements of the present claims.

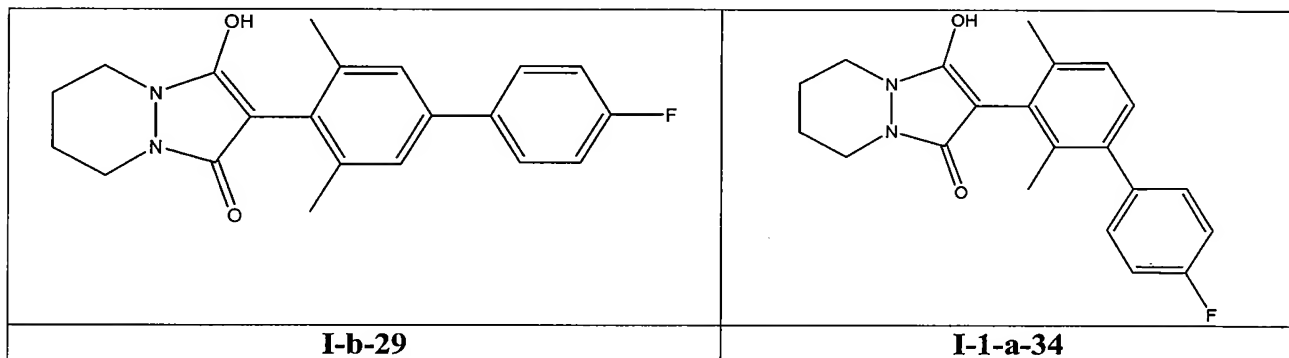
Further, Maetzke does not provide a rationale for modifying its compounds to arrive at the claimed compounds. *KSR* provides that the rationale for modifying a

reference must be made explicit. In view of at least the above arguments, Applicants request that all rejections under 35 U.S.C. § 103 be withdrawn.

ii. The claimed compounds demonstrate unexpected results over the cited art

Even assuming that claims 1-14 and 19-21 are *prima facie* obvious in view of the cited reference, Applicants respectfully submit the attached Declaration under 37 C.F.R. § 1.132 executed by Dr. Wolfgang Thielert (Declaration), an expert in the field of herbicides with a specialization in plant protection. Table BCS 03-03047 of the Declaration demonstrates that the claimed compounds of formula (I) show unexpected and superior herbicidal activity over the compounds taught by Maetzke:

Maetzke Compounds	Instantly Claimed Compounds
	
I-a-14	I-2-a-35
	
I-b-41	I-1-a-35



As seen in the table *supra*, and noted by the Examiner, one difference between the claimed compounds and those compounds taught by Maetzke, is the position of substituents on the phenyl ring. Maetzke teaches compounds which feature substituents at the para-position (compounds I-a-14, I-b-41 and I-b-29). One embodiment of the present invention features compounds comprising a halogen substituted phenyl ring at the meta-position. (compounds I-2-a-35, I-1-a-35 and I-1-a-34). The Declaration indicates that three different experiments were performed to compare the activity of the claimed compounds to structurally similar compounds taught by Maetzke. Declaration, pages 2-3. The results indicate that the claimed compounds of formula (I) exhibit greater activity than the Maetzke compounds in killing beetle larvae (*Phaedon chochleariae*, as seen in experiment 1), fall armyworm larvae (*Spodoptera frugiperda*, as seen in experiment 2) and instars of green peach aphid (*Myzus persicae*, as seen in experiment 3). Declaration, page 4, Table BCS 03-3047. Specifically, the claimed compounds of formula (I) exhibited from 33% to 100% more activity than the Maetzke compounds. *Id.* Thus, the presently claimed compounds of formula (I) produce unexpected and superior results over the compounds taught by Maetzke, and are therefore unobvious. In view of at least the above arguments, Applicants respectfully request that all rejections under 35 U.S.C. § 103 be withdrawn.

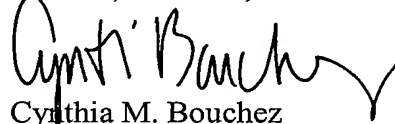
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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